IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE.

WRIT PETITION NO. 4761 OF 2003

New Kasturba Shikshan Prasarak Sanstha and anr. ..... Petitioner.

versus

The Deputy Director of Education Pune Region, Pune and others ..... Respondents.

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Shri S.G. Kudle for the petitioner.
Shri R.D. Rane AGP for the State - respondents 1 and 3
Shri Siddharth Likhite for Shri Nitin Jamdar for Respondent no.2

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CORAM ; V.G.PALSHIKAR &
MRS. RANJANA DESAI, JJ.

DATED; AUGUST, 2004.

P.C.;

1. By this petition the petitioner claimed a declaration that the petitioner institution i.e. New Kasturba Shikshan Prasarak Sanstha is a minority institution as contemplated by Article 30 of the Constitution of India and therefore it is entitled to protection, mentioned in section 3 of the MEPS Act. Further the case of the petitioner is that in exercise of its powers under section 3 of the MEPS Act the petitioner has appointed its head of the institution and the post is held by the petitioner no.2.

2. Reply is filed by the respondent and it is contended that the question of petitioner no.1 being minority institution cannot arise and it is not a minority institution and therefore it is not entitled to the benefit of section 3. It is further contended that even if that is the position approval cannot be granted to the appointment of petitioner no.2 as head master because he is not even a teacher. We have to consider the above rival contentions by examining the question as to whether refusal of approval is legal and valid. The petitioner states that the petitioner no.1 is an educational institution falling under section 20(1) of the Constitution of India. Since the said institution is a minority institution on the basis of religion and language, the petitioner no.2 has been appointed as Head Master of petitioner no.1 and on which religion or minority the petitioner belongs to, is not clear. A memorandum of Association filed as Annexure 1 to the petition describes the petitioner no.1 as New Kasturba Shikshan Prasarak Sanstha at Solapur. In so far as the propogation of Urdu language is concerned, and in so far as the conduct of education is concerned and development of Muslims in the matter of education is concerned the petitioner society may be a minority society. But that is not the issue in the

present case. An affidavit has been filed by the respondent State that due to non-compliance of the queries by the Institution, the institution has not got the registration of minority status. That being the case, the prayer of the petitioner for declaration to that effect cannot be granted. In so far as the approval of appointment of petitioner no.2 is concerned, it obviously cannot be ordered for the reason that he is not even a teacher and provisions of section 3(2) are not attracted to the appointment of petitioner no.2 as head of the institution.

4. In the result therefore, the petition fails and it is dismissed.

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